*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.1708 OF 2005

% 21-06-2005

# Siddi Vinayaka Raw & Boiled Rice Mill, Jaggammagari Peta,

Samarlkot, East Godavari District.

..PETITIONER

Vs.

$ A.P.Eastern Power Distribution Co.Ltd.,Kakinada & another.

..RESPONDENTS

! COUNSEL FOR PETITIONER: SMT.N.(P).ANJANA DEVI, SATYANARAYANA
^ COUNSEL FOR RESPONDENTS: SMT.M.VINOBHA DEVI

-

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. (1994) 4 SCC 104
2. (1989) 3 SCC 293

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE V.V.S.RAO**

-

**WRIT PETITION No.1708 of 2005**

Between:

Siddi Vinayaka Raw & Boiled Rice Mill, rep., by Managing Partner

Sri Edala Suryanarayana, S/o Rudra Murthy, aged 53 years,

r/o Jaggammagari peta, Sammalkot, East Godavari District.

**..... PETITIONER**

AND

1 A.P.Eastern Power Distribution Co.Ltd., rep., by its Divisional

Engineer (OPeration), Kakinada, East Godavari District.

2 The Assistant Accounts Officer, ERO., Samalkot, Eastern Power

Distribution Corporation of A.P.Ltd., Samalkot Mandal,

East Godavari District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the inaction of the respondents in not cancelling the service connection contract itself for the service connection No.905 category III(B) in spite of repeated requests including the request in writing dated 31-03-2004 and issuing monthly demand notices for minimum monthly charges from the month of September, 2003 till date and also issuing a consequential demand notice in Form-A dated nil but received on 24-12-2004 claiming Rs.5,00,948.50 ps., as arrears towards monthly minimum charges as illegal, arbitrary, capricious, unjust and unwarranted and violative of principles of natural justice and fair play, and consequently to direct the respondents to cancel the service connection to the petitioner rice mill i.e., M/s.Siddi Vinayaka Raw & Boiled Rice Mill, Unduru, Samalkot Mandal, East Godavari District and set-aside the consequential demand notice in Form-A issued by the 2nd respondent dated Nil or to pass any other order or orders.

**Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA**

**Counsel for the Respondents: SMT.M.VINOBHA DEVI**

**The Court made the following:**

ORDER:

M/s. Siddi Vinayaka Raw & Boiled Rice Mill filed the present writ petition seeking a writ of Mandamus declaring the inaction of the respondents in not cancelling the service connection No.905 (Category III(B)) in spite of requests made by the petitioner on 31.3.2004 and issuing demand notice for minimum monthly charges from the month of September, 2003 is illegal and arbitrary, and also for a declaration that the demand notice in Form-A claiming a sum of Rs.5,00,948.50 ps. as arrears is illegal and arbitrary.

The fact of the matter in brief is as follows. The petitioner rice mill was established in

May, 2000. It was given service connection under Category III (B) with 150 HP of contracted load. As the situation warranted, the respondents also installed a transformer on petitioner paying a sum of Rs.85,000/-. The petitioner rice mill was operated for some years, but, ultimately, the same was stopped in the month of September, 2003 duly paying the electricity consumption charges till that date. The respondent started issuing electricity demand notices every month showing electric consumption as '0' units raising minimum monthly demand from Rs.34,000/- to Rs.38,000/-. Therefore, the petitioner allegedly made number of requests to cancel the service connection and also submitted a representation on 31.3.2004, in vain. Therefore, the present writ petition is filed.

It is the case of the petitioner that as the rice mill was running in losses, he stopped all operations and requested the respondents to cancel service connection and that though the second respondent is issuing demand notices regularly showing consumption as '0' units, huge amounts of arrears are being claimed, and the second respondent also issued notice in Form-A under A.P. State Electricity (recovery of dues) Act, 1984 (the Act, for brevity) claiming a sum of Rs.5,00,948.50 ps., which is illegal.

This Court while ordering notice before admission by order dated 11.2.2005 directed the respondents not to issue any bills to the petitioner. This Court also gave liberty to the respondents to cancel the service connection and remove the same. The respondents moved W.V.M.P.No.694 of 2005 for vacating the interim order. At that stage itself with the consent of the parties, the matter was heard finally and is being disposed of.

In the counter affidavit filed by the second respondent, it is stated that at the request made by the petitioner, the respondents agreed to supply 148 HP + 1480 Watts of electricity @ Rs.432/- per H.P. for a period of five years under Special Guarantee Agreement. The agreement was entered into on 07.3.2000, which governs tariff and terms of supply of electricity. As per clauses 10 and 11 of the agreement, the petitioner is liable to pay minimum charges every month as prescribed in tariff and terms and conditions apply even when no electricity is consumed by reason whatsoever and also charges for electricity actually consumed or less than the minimum charges. So as to supply electricity to the petitioner, the respondents laid electricity lines by spending huge amounts and therefore under Special Guarantee Agreement, the petitioner is liable to pay the amount, which commenced on 06.7.2000 when the electricity was released to the petitioner's rice mill.

It is further stated that as per the Special Guarantee Agreement, if the consumption of electricity by the petitioner exceeds Rs.64,800/- per annum, the consumer has to pay the total amount of Rs.64,800/- being special guarantee amount. In addition to the same, the petitioner has to pay consumption charges, fixed monthly charges and customer minimum charges totaling Rs.29,842.45 ps. The allegation that the petitioner made an application for cancellation of service connection in time is denied. It is stated that for the first time, the petitioner submitted representation on 31.3.2004 requesting to disconnect service connection temporarily. As he has not paid the amount due and liable, the service connection was disconnected on

20.6.2003 itself and therefore, the question of disconnection does not arise. The petitioner is liable to pay a sum of Rs.6,58,306.10 ps. to the respondents after deducting the amounts paid by the petitioner and after adjusting initial deposits made by him. Therefore the respondents issued notice in Form-A under the Act claiming an amount of Rs.5,00,948.50 ps. The petitioner paid a sum of Rs.50,000/- on 24.1.2005. The Form-A notice was issued in terms of the agreement as well as under the provisions of the Act. In the counter affidavit, it is further stated that in addition to the amount claimed in Form-A notice, the petitioner is liable to pay an amount of Rs.1,21,291.50ps. towards back billing charges. A suit is filed by the respondents being O.S.No.224 of 2003 on the file of the Court of the II Senior Civil Judge, Kakinada, which is pending. The petitioner has no legal right to enforce the writ petition.

The learned Counsel for the petitioner, Sri P.Satyanarayana, submits that when the power supply was disconnected, the respondents cannot claim minimum charges from the petitioner. He further contends that though the petitioner has a remedy of suit under Section 5 of the Act, it is not an efficacious remedy, as a consumer disputing the levy is required to deposit the amount under protest and then seek remedy. **Per contra**, the learned Standing Counsel for A.P. Transco, Sri Ajay Kumar, submits that the petitioner has entered into an agreement and giving a special guarantee to avail the power supply for a minimum period of five years. Even the petitioner fails to avail, he is liable to pay the guarantee amount at Rs.432/- per HP per year. The respondents only claimed the amount towards that head and therefore, there is no illegality.

It is now well settled that when the dispute between the petitioner and the public authority is contractual, ordinarily, writ would not lie to enforce the terms of the contract or to invalidate such terms. Indeed, the petitioner does not even challenge the relevant clause in the agreement. Even assuming that the agreement between the petitioner and A.P. Transco is statutory in nature, if the public authority takes action in accordance with such statutory agreement, no person can be heard to say that the enforcement of the obligations under the contract is arbitrary. This principle is well settled. A reference may be made to the decision of the Supreme Court in **Asst. Excise Commissioner v. Issac Peter** wherein it was held:

> In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract – or rather more so. It is one thing to say that a contract – every contract – must be construed reasonably having regard to its language. But

> this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in converse case, i.e., where the State has abundant supplies and wants the licensees to lift all the stocks even if the State suffers loss. The one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate. The decisions cited by the learned Counsel for the licensees do not supprt their proposition. In **Dwarakadas Marfatia v. Board of Trustees of the Port of Bombay** it was held that where a public authority is exempted from the operation of a statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine.

It was also held therein that when the parties undertake to abide by the terms of contract, the doctrine of unjust enrichment cannot be invoked especially in business transactions. It was also held that a writ petition or suit cannot be laid to wriggle out of contractual obligations entered into by the parties.

As noticed supra, the petitioner entered into agreement with the respondents on 07.3.2000. The agreement provides for tariff rates and terms of supply. Under clause 5, the petitioner undertook to avail supply for a minimum period of five years from the date of the agreement. Under clause 11, which is a special annual minimum guarantee clause, he agreed to pay the amount whether or not he avails the power supply. It reads as under:

> In consideration of the A.P.Transco making arrangements for and supplying electrical energy to me/us I/We, agree with effect from the date of commencement of this Agreement for the period of five years to guarantee a minimum payment of Rs.432/- (Rupees four hundred and thirty two per H.P. per year for a period of five years only) every year towards energy charges, exclusive payment towards surcharge, meter rents or other payments, by whatever name they may be called. If the amounts actually paid towards energy charges during any year fall short of the guaranteed minimum, the amount in deficit shall be deem to be an arrear of the electricity charges and recovered accordingly.

A plain reading of the above clause with clause 5 of the agreement would make it clear the submission of the learned Counsel for the petitioner that the respondents have resorted to arbitrary exercise is misconceived. Indeed, as mentioned in the counter affidavit, the respondents disconnected the power supply on 26.3.2003, as the petitioner did not pay the amount and it appears that the petitioner sent another representation on 31.3.2004 only to prevent the respondents from claiming the bills as per clause 11 of the agreement.

The writ petition is devoid of merits and is, accordingly, dismissed.

_____

(**V.V.S. RAO,J**)

21.06.2005

NOTE:

**L.R.Copy be marked.**

(B/o)

YS

To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1 The Divisional Engineer (OPeration),A.P.Eastern Power Distribution

Co.Ltd., Kakinada, East Godavari District.

2 The Assistant Accounts Officer, ERO., Samalkot, Eastern Power

Distribution Corporation of A.P.Ltd., Samalkot Mandal,

East Godavari District.

3 The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

4 Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

5 8 LR copies.

6 2 CD copies.